

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 609/2006
(Bhanga Ram & Ors. V/s State of Rajasthan & anr.)

Date of Order : 07/08/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. H.S.Sandhu, for the petitioners.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Iqbal Sherani for the non-petitioner No.2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners have challenged the order dated 12.4.2006 passed by learned Sessions Judge, Bikaner (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioners against the order dated 27.8.1990 passed by Judicial Magistrate, Lunkaransar (for short 'the trial court' hereinafter), was dismissed.

I have heard learned counsel for the parties. Perused the order of the revisional court as well as of the trial court.

It is contended by the learned counsel for the petitioners that a notice under Section 22 of the Rajasthan Colonisation Act (for short 'the Act' hereinafter), was served on the complainant for removal of the encroachment. The

complainant failed to remove the encroachment and therefore, under the order of Dwarka Prasad, co-accused in the case, who at the relevant time was Additional Collector and Secretary, Mandi Vikas Samiti, Lunkaransar, the petitioners acted in removal of the encroachment and therefore, the petitioners being employees of the Mandi Vikas Samiti, under the orders of the Additional Collector and Secretary, Mandi Vikas Samiti, Lunkaransar Shri Drawka Prasad had gone to remove the encroachment and therefore, according to learned counsel for the petitioners, no offence has been committed by the petitioners. The petitioners were under obligation to obey the lawful command given by the Additional Collector and Secretary, Mandi Vikas Samiti. Learned counsel for the petitioners has relied on decision of this Court in Ganesh Singh and Others Vs. State of Rajasthan, 1986 Rajasthan Criminal Cases 354. It was further contended that the petitioners being public servant and were discharging their official duty in removal of the encroachment, therefore, they are protected by Section 197 Cr.P.C. No sanction as envisaged under Section 197 Cr.P.C. has been accorded to prosecute the petitioners and therefore, the order taking cognizance is bad and lastly it was contended that the proceeding against the similarly situated co-accused Dwarka Prasad has been quashed by this Court in S.B.Cr. Misc. Petition No.282/1994 by order dated 03.03.2004.

Learned counsel appearing for the complainant non-petitioner submits that the petitioners were engaged in removal of unauthorised encroachment, but while removing the unauthorised encroachment, they exceeded their power and committed the offence and therefore, they cannot claim protection of Section 197 Cr.P.C.

I have given my thoughtful consideration to the rival submissions made by the counsel for the parties.

A complaint was filed by non-petitioner complainant Munshi Khan before the trial court on 11.5.1990 alleging therein that in Ward No. 14 (Indira Colony) of old Aabadi area, Lunkaransar, he has been residing along with his family for last 35 years. In the year 1981, State of Rajasthan declared the area as Mandi area to convert the same into Mandi Vikas. The complainant was sought to be evicted being unauthorized trespasser. In the year 1988, he filed a civil suit being Civil Suit No. 4/88 for permanent injunction as also filed an application seeking temporary injunction which came to be dismissed by the Civil Court vide order dated 23.1.1990. Thereafter, Dwarka Prasad, who at the relevant time, was Additional Collector, Mandi Vikas Samiti, ordered removal of the encroachment, which was resisted by the complainant. However, on 29.1.1990, Shri

Dwarka Prasad along with other employees who are present petitioners, and some other police officials, came and threatened the family members of the complainant, assaulted them and committed house trespass and thereafter removed the encroachment.

On the basis of the complainant and statement of the witnesses produced by the complainant, the trial court took the cognizance of the offence and issued the process. That order came to be challenged by the petitioners and one Dwarka Prasad before the revisional court. The revisional court dismissed the revision petition. Against that order, a petition under Section 482 Cr.P.C. was filed by Dwarka Prasad, the then Additional Collector and Secretary, Mandi Vikas Samiti, Lunkaransar. By order dated 03.03.2004, in S.B.Cr.Misc. Petition No.282/94, this Court allowed the petition filed by Dwarka Prasad, set aside the order dated 10.2.1994 passed by revisional court as also the order dated 27.8.90 passed by Judicial Magistrate, Lunkaransar and quashed the proceedings qua him. By the very order dated 27.8.90, the Judicial Magistrate, Lunkaransar took the cognizance of the offences against the present petitioners and Dwarka Prasad. It appears from the record that complainant Munshi Khan has unauthorisedly occupied a piece of land measuring 300 Sq. Ft. and constructed a hut thereon. He was

served with a notice under Section 22 of the Act for removal of the unauthorized possession. Complainant Munshi Khan contested the said notice by way of filing a civil suit in the Court of Munsif and Judicial Magistrate, Lunkaransar and a temporary injunction was granted, however, subsequently, the suit itself was dismissed on 23.1.1990. Thus, the unauthorized possession was removed on 29.1.1990 after dismissal of the suit filed by complainant Munshi Khan. A crime report was lodged against complainant Munshi Khan with Police Station, Lunkaransar which was submitted by petitioner No.1 Bhanga Ram who at the relevant time was Patwari. Petitioner Bhanga Ram alleged in the report that complainant Munshi Khan had illegally occupied the piece of land measuring 300 Sq.Ft. and constructed a hut thereon. A notice was issued to the trespasser to remove the unauthorized construction and was served on his son Liyaquat Ali who is now non-petitioner No.2 in the instant case. Despite repeated notice having been served on Munshi Khan as also his son, no reply was given and accordingly the Tehsildar, Mandi Vikas Samiti, Lunkaransar declared the possession of Munshi Khan illegal vide order dated 26.10.1981 and issued a notice dated 23.3.1982 for removal of illegal occupation, failing which the department will do the same. On receipt of the notice, Munshi Khan filed a civil suit which ultimately came to be dismissed as noticed above.

In *Ganesh Singh and Others Vs. State of Rajasthan* (supra) this Court held that if a particular act ascribed to a public servant can be said to be done in exercise of his official duty or in purported exercise of such duty and merely because there has been some excess in the discharge of the duties, a public servant, cannot be deprived of protection under Section 197 Cr.P.C. It was further held that the persons acting under their directions can also not be prosecuted and in these circumstances no question of prosecuting them arises. In that case, all the accused persons were employees of Municipal Board, Niwai. They had gone to the spot under the orders of the Chairman of the Municipal Board to remove the encroachments under Section 203 of the Act. When the matter was before Sessions Judge, learned Sessions Judge observed that all the accused persons had gone under the orders of the Municipal Board to remove the encroachments but they had no right to give beating or setting fire to the huts and other properties of those who encroached over the municipal land. This Court held that the accused petitioners who had gone to remove the encroachments under the orders of the Chairman and Administrator of the Municipal Board, cannot be held responsible for any act alleged to have been done by them, even if in performing their duty and removing the encroachments, reasonable force was used by them and accordingly they were discharged.

On the same facts, arising out of the very case in Dwarka Prasad Vs. State of Rajasthan, this Court held that petitioner Dwarka Prasad therein and the other officials who are employees of the Mandi Vikas Samiti in discharge of their official duty, along with police party went to the spot and removed the unauthorized occupation of complainant Munshi Khan. In that view of the matter, this Court held that provisions of Section 197 Cr.P.C. applies to the facts of the present case and admittedly there being no sanction to prosecute the petitioner therein, the cognizance taken by the Magistrate was held to be bad in law and accordingly the order taking cognizance dated 27.8.90 which is under challenge in the instant case also, was set aside and proceeding against Dwarka Prasad who is co-accused in the case, was quashed. The case of the present petitioners is also on identical facts and arises out of one and same case and the order impugned is common. In my view, therefore, the instant petition deserves to be allowed in terms of the order of this Court dated 03.03.2004 passed in S.B.Criminal Misc. Petition No.282/94 "Shri Dwarka Prashad Vs. The State of Raj. & Anr."

Consequently, the criminal misc. petition is allowed. The order dated 12.4.2006 passed by the Sessions Judge, Bikaner in Criminal Revision No.153/2005 and the order dated 27.8.1990 passed by Judicial Magistrate, Lunkaransar are set

aside qua the present petitioners. The proceedings against the petitioners stand quashed. Stay petition also stands disposed of.

(H.R.PANWAR),J.

rp